

MELINDA HAAG (CABN 132612)
United States Attorney

J. DOUGLAS WILSON (DCBN 412811)
Chief, Criminal Division

NATALIE LEE (CABN 277362)
KIMBERLY HOPKINS (MABN 668608)
ANDREW M. SCOBLE (CABN 124940)
Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7301/7249
Fax: (415) 436-7234
Natalie.Lee2@usdoj.gov
Kimberly.Hopkins@usdoj.gov
Andrew.Scoble@usdoj.gov

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA) No. CR 14-0120-EMC
v.)
EDUARDO ALVAREZ, et al.,) JOINT STATUS CONFERENCE STATEMENT
Defendants.) Status Hrg.: August 29, 2014
) Time: 2:00 p.m.
) Courtroom: Four (17th Floor)
)
)

In anticipation of the status conference scheduled for August 29, 2014 at 2:00 p.m., the parties submit this Joint Status Conference Statement.¹

A. Proceedings Before the Assigned Magistrate Judge

Pursuant to the Court's order of June 27, 2014, the parties appeared informally before U.S. Magistrate Judge Cousins on July 7, 2014 and August 5, 2014. At these sessions the parties discussed

¹ Undersigned counsel apologize for the late filing of this Statement. By way of explanation (but not excuse), undersigned counsel have both been out of town in the last week, and the parties have prepared for and appeared at two hearings before U.S. Magistrate Judge Cousins in connection with this case.

1 with Judge Cousins the range of issues in dispute, including the propriety of redactions, use of a
 2 protective order, logs, and an order re preservation of evidence.

3 On August 21, 2014, the government submitted (and produced to defense counsel) a log
 4 summarizing material redacted and material withheld altogether in the discovery produced.

5 The parties have briefed and argued defendants' motion for disclosure of grand jury information
 6 as well as the defendants' request for notice under Federal Rule of Criminal Procedure 12(b)(4)(B). The
 7 government has agreed to facilitate the disclosure, pursuant to an agreed protective order, of the relevant
 8 Form AO-12, as well as the dates of commencement and termination of the relevant grand jury;
 9 defendants' other requests are under submission. Judge Cousins has taken under submission the timing
 10 of the government's Rule 12(b)(4)(B) notice, in part pending the August 28, 2014 evidentiary hearing at
 11 which counsel for the SFPD will address the Court on issues pertaining to the proposed preservation
 12 order, as well as pending the Court's rulings at the August 29, 2014 status hearing (including whether a
 13 trial date is set).

14 The parties are scheduled to appear before Judge Cousins today (August 28, 2014) for a hearing
 15 – including testimony – at which SFPD counsel Ronnie Wagner will address the parties' competing
 16 proposals for a preservation order.

17

18 **B. Status of Discovery**

19 On July 31, 2014, the government produced in discovery all state wiretap materials **except** the
 20 two affidavits, for which redactions must be approved by the supervising state judge, San Francisco
 21 Superior Court Judge Anne Christine Massullo. With the exception of the affidavits, the defense
 22 received all of the state wiretap pleadings, with no redactions other than the names of civilian monitors.
 23 The defense received, without redactions, 5596 pages of line sheets for the three intercepted lines, and
 24 three DVDs of audio recordings (which also include Word versions of the monitors' synopses of
 25 pertinent calls).²

26

27

² In reviewing the discovery produced, government counsel realized that the copy of Ten-Day
 28 Report No. 3 appears to be incomplete. The government will obtain and produce a complete copy of
 that report.

1 The defense submits that the redactions (and withholding) has deprived the defense of the
2 materials necessary to understand and evaluate the specific charges and acts related to each defendant.
3 The defense intends to litigate this issue and understands that this Court has assigned this issue to the
4 Magistrate Court.

5 The government has continued to produce discovery, including materials pertaining to the
6 August 30, 2011 murder of Edson Lacayo, police reports pertaining to incidents not substantively
7 charged in the pending indictment, and recordings of jail calls. This process is ongoing.

8 As of today's date, by the government's calculation, it has produced approximately 15,227 pages
9 of documents and 51 DVDs and CDs of recordings. As noted above, these productions have been
10 subject to redaction, which issue has been identified as a priority for the parties to litigate before
11 Magistrate Judge Cousins.

12

13 **C. Other Issues**

14 The government has informed Magistrate Judge Cousins and counsel that it is considering a
15 possible superseding indictment. The determination is pending the completion of ongoing investigations
16 pertaining to defendants not yet charged in this case.

17 With respect to the death-eligible charges for defendants Jairo Hernandez and Carlos Vasquez,
18 the expedited approval request is now pending in Washington, D.C.

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 D. Next Steps

2 The parties are meeting and conferring this afternoon (August 28, 2014) about suggestions for a
3 future date or dates before the Court. We propose to submit a letter to the Court in the morning
4 tomorrow (August 29, 2014) setting forth the results of our discussion.

5
6 DATED: August 28 2014

MELINDA HAAG
United States Attorney

7
8 By: /s/
9 KIMBERLY HOPKINS
NATALIE LEE
ANDREW M. SCOBLE
10 Assistant United States Attorneys

11
12 DATED: August 28 2014

13 /s/
14 MARTIN SABELLI
15 Counsel for Jairo Hernandez